

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANATOLIY ANDREYUK and JENNY  
FELIPPELLI, as Executor of the Estate  
of JOSE FELIPPELLI,

Plaintiffs,

**DECISION AND ORDER**

-against-

19-cv-7476 (AEK)

ASF CONSTRUCTION & EXCAVATION  
CORP. and ANDRE FERNANDEZ,

Defendants.

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**THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.**

In response to the Court's order at ECF No. 130, Plaintiffs' counsel has submitted a declaration in support of his application for the reimbursement of expenses incurred litigating this action. ECF No. 131. Because counsel has now sufficiently substantiated the expenses sought, and for all the reasons set forth in ECF No. 130, the Court hereby APPROVES the Proposed Settlement Agreement in this matter (ECF No. 129-1) as fair and reasonable.

In the Proposed Settlement Agreement, Plaintiffs' counsel seeks expenses of \$2,127.65—\$400.00 for the court filing fee, \$18.40 for parking, \$1,181.25 for court reporting fees associated with depositions, and \$528.00 for printing and copying fees.<sup>1</sup> *See* ECF No. 131-1 at 4; *see also* Proposed Settlement Agreement § 2.c; ECF No. 131-1 at 1 ¶ 5.c. Counsel in FLSA cases may be

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<sup>1</sup> In his declaration, Plaintiffs' counsel states that “there are no expenses being recovered.” ECF No. 131-1 at 1 ¶ 7. But whatever the intention of counsel may or may not have been, the Proposed Settlement Agreement presented to the Court for approval plainly provides for the payment of litigation expenses. Proposed Settlement Agreement § 2.c; *see also* ECF No. 129 at 3; ECF No. 131-1 at 1 ¶ 5.c. The Court therefore must consider the proposed expenses to be part of the Proposed Settlement Agreement and must consider the propriety of the expenses as part of the analysis of the payment to be made to Plaintiffs' counsel.

awarded reasonable out-of-pocket expenses that are properly substantiated. *See, e.g., Cortes v. New Creators, Inc.*, No. 15-cv-5680 (PAE), 2016 WL 3455383, at \*6 (S.D.N.Y. June 20, 2016) (“Court fees reflected on the Court’s docket are sufficiently substantiated, as are costs for which a claimant provides extrinsic proof, such as invoices or receipts. A sworn statement or declaration under penalty of perjury that certain amounts were expended on particular items is also sufficient.”) (citations omitted).

The court filing fee of \$400 is reflected on the docket, and thus is sufficiently substantiated. Counsel has now also provided receipts for the \$1,181.25 spent for court reporting fees, and therefore this expense is likewise sufficiently substantiated. *See* ECF No. 131-1 at 5-6. Of the other expenses claimed, counsel has provided receipts for \$14.40 of the \$18.40 he claimed for parking, *id.* at 7, and \$511.84 of the \$528.00 that he claimed for printing and copy fees, *id.* at 9-13.<sup>2</sup> Although counsel failed to substantiate \$20.16 of the expenses sought, given that Plaintiffs’ counsel’s requested total award of \$24,166.67 in fees and costs is still well below the total lodestar amount, *see* ECF No. 130 at 9-10, the Court finds that the requested award is fair and reasonable.

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<sup>2</sup> In connection with his supplemental submission, counsel has also provided a U.S. Postal Service receipt for \$7.35, ECF No. 131-1 at 14, which counsel states represents “the mailing expense for the summons and complaint,” ECF No. 131-1 at 2 ¶ 8. Because this expense was not listed in the original *Cheeks* application and is not included in the \$2,127.65 that counsel seeks to recover through the Proposed Settlement Agreement, *see* ECF No. 129-4; ECF No. 131-1 at 4 (listing expenses that amount to \$2,127.65), the Court does not consider this additional expense in its analysis.

For the reasons set forth above, the Court finds the proposed settlement to be fair and reasonable, and the Proposed Settlement Agreement as filed at ECF No. 129-1 is hereby APPROVED. Plaintiffs will receive a total of \$72,500.00, with \$10,000 payable to Ms. Felippelli, \$38,333.33 payable to Mr. Andreyuk, and \$24,166.67 payable to Plaintiffs' counsel. The Court will separately sign and enter the stipulation filed at ECF No. 129-1, Exhibit A.

The Clerk of Court is respectfully directed to close this case.

Dated: June 22, 2023  
White Plains, New York

**SO ORDERED.**



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ANDREW E. KRAUSE  
United States Magistrate Judge